

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
CORPUS CHRISTI DIVISION

EUGENE BLACKMON  
TDCJ-CID #485431

v.

WARDEN KUKUA, ET AL.

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§

C.A. NO. C-08-273

**ORDER DENYING PLAINTIFF'S MOTION FOR DEFAULT JUDGMENT**

This is a civil rights action filed by a state prisoner pursuant to 42 U.S.C. § 1983. On November 10, 2008, plaintiff filed a motion for default judgment. (D.E. 25). For the following reasons, plaintiff's motion is denied.

**BACKGROUND**

Plaintiff is suing five employees of the Texas Department of Criminal Justice, Correctional Institutions Division. (D.E. 21). On August 28, 2008, he consented to proceed before a magistrate judge. (D.E. 18). Consequently, his action was referred pursuant to Neals v. Norwood, 59 F.3d 530 (5th Cir. 1995). (D.E. 19).

An order for service of process was issued on September 19, 2008. (D.E. 22). The Clerk's Office issued a summons in a civil case that same day. Unfortunately, the summons was sent to Kent Sullivan at the address for the United States Attorney General in Washington, D.C. Mr. Sullivan is the First Assistant Attorney General for the State of Texas. The Texas Attorney General's office is located in Austin, Texas. Thus, the summons was never properly served on defendants.

**DISCUSSION**

Plaintiff argues that the defendants failed to file an answer, and that he is therefore entitled to default judgment. (D.E. 25, at 1-2). As the Fifth Circuit has established, "the entry of

default judgment is committed to the discretion of the district judge.” Mason v. Lister, 562 F.2d 343, 345 (5th Cir. 1977) (citation omitted); accord Lewis v. Lynn, 236 F.3d 766, 767 (5th Cir. 2001) (per curiam). Furthermore, “[f]ederal courts generally disfavor default judgments, preferring to resolve disputes according to their merits.” Harper MacLeod Solicitors v. Keaty & Keaty, 260 F.3d 389, 393 (5th Cir. 2001) (citations omitted); see also Lewis, 236 F.3d at 767.

Because of the Clerk’s error in issuing the summons, defendants have not been properly served. Consequently, they did not have notice that they were to respond to plaintiff’s complaint.

### **CONCLUSION**

For the foregoing reasons, plaintiff’s motion for default judgment, (D.E. 25), is hereby DENIED. Moreover, the Clerk of the Court is ORDERED to reissue the summons with complaint to Kent Sullivan at his correct address.

ORDERED this 12th day of November 2008.



BRIAN L. OWSLEY  
UNITED STATES MAGISTRATE JUDGE